

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION
11

12 ALAN PALOMINO, an individual,

13 Plaintiff,

14 v.

15 CITY OF ANAHEIM, a municipality;
16 OFFICER JASON SMITH, an
17 individual; and DOES 1 - 10,
18 inclusive,

19 Defendants.

Case No.: 8:18-cv-1498 DOC (JDEx)

STIPULATED PROTECTIVE ORDER

Action Filed: 8/23/2018

20
21 1. PURPOSES AND LIMITATIONS

22 Discovery in this action is likely to involve production of confidential,
23 proprietary or private information for which special protection from public
24 disclosure and from use for any purpose other than pursuing this litigation may be
25 warranted. Accordingly, the parties hereby stipulate to and petition the Court to
26 enter the following Stipulated Protective Order. The parties acknowledge that this
27 Order does not confer blanket protections on all disclosures or responses to
28 discovery and that the protection it affords from public disclosure and use extends

1 only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles.

3 2. GOOD CAUSE STATEMENT

4 This action is likely to involve information which may be privileged or
5 otherwise protected from disclosure under state or federal statutes, case decisions
6 or common law, some of which was acquired in confidence by public employees in
7 the course of their duties and is generally unavailable to the public. Such
8 confidential materials and information consists of, among other things: the Orange
9 County District Attorney's Office Officer Involved Shooting Investigation; the City
10 of Anaheim internal investigation of the subject incident; City of Anaheim Police
11 Department reports, body worn camera video and audio recordings (which may
12 include information implicating privacy rights of third parties, parties and
13 witnesses); law enforcement investigative reports and records concerning plaintiff's
14 prior interactions with law enforcement (which may contain personal contact
15 information of third party witnesses and alleged crime victims); confidential police
16 officer personnel and disciplinary materials maintained by the APD for defendant
17 police officer Smith (including information implicating privacy rights of third
18 parties); and/or plaintiff's medical and/or mental health records. Accordingly, to
19 expedite the flow of information, to facilitate the prompt resolution of disputes
20 over confidentiality of discovery materials, to adequately protect information the
21 parties are entitled to keep confidential, to ensure that the parties are permitted
22 reasonable necessary uses of such material in preparation for and in the conduct of
23 trial, to address their handling at the end of the litigation, and serve the ends of
24 justice, a protective order for such information is justified in this matter. It is the
25 intent of the parties that information will not be designated as confidential for
26 tactical reasons and that nothing be so designated without a good faith belief that it
27 has been maintained in a confidential, non-public manner, and there is good cause
28 why it should not be part of the public record of this case.

1 3. ACKNOWLEDGMENT OF UNDER SEAL FILING
2 PROCEDURE

3 The parties further acknowledge, as set forth in Section 14.3, below, that
4 this Stipulated Protective Order does not entitle them to file confidential
5 information under seal; Local Civil Rule 79-5 sets forth the procedures that must
6 be followed and the standards that will be applied when a party seeks permission
7 from the court to file material under seal. There is a strong presumption that the
8 public has a right of access to judicial proceedings and records in civil cases. In
9 connection with non-dispositive motions, good cause must be shown to support a
10 filing under seal. See Kamakana v. City and County of Honolulu, 447 F.3d 1172,
11 1176 (9th Cir. 2006), Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th
12 Cir. 2002), Makar-Welbon v. Sony Electronics, Inc., 187 F.R.D. 576, 577 (E.D. Wis.
13 1999) (even stipulated protective orders require good cause showing), and a
14 specific showing of good cause or compelling reasons with proper evidentiary
15 support and legal justification, must be made with respect to Protected Material
16 that a party seeks to file under seal. The parties' mere designation of Disclosure or
17 Discovery Material as CONFIDENTIAL does not— without the submission of
18 competent evidence by declaration, establishing that the material sought to be filed
19 under seal qualifies as confidential, privileged, or otherwise protectable—
20 constitute good cause.

21 Further, if a party requests sealing related to a dispositive motion or trial,
22 then compelling reasons, not only good cause, for the sealing must be shown, and
23 the relief sought shall be narrowly tailored to serve the specific interest to be
24 protected. See Pintos v. Pacific Creditors Ass'n., 605 F.3d 665, 677-79 (9th Cir.
25 2010). For each item or type of information, document, or thing sought to be filed
26 or introduced under seal, the party seeking protection must articulate compelling
27 reasons, supported by specific facts and legal justification, for the requested sealing
28 order. Again, competent evidence supporting the application to file documents

1 under seal must be provided by declaration.

2 Any document that is not confidential, privileged, or otherwise protectable
3 in its entirety will not be filed under seal if the confidential portions can be
4 redacted. If documents can be redacted, then a redacted version for public viewing,
5 omitting only the confidential, privileged, or otherwise protectable portions of the
6 document, shall be filed. Any application that seeks to file documents under seal in
7 their entirety should include an explanation of why redaction is not feasible.

8 4. DEFINITIONS

9 4.1 Action: this pending federal lawsuit.

10 4.2 Challenging Party: a Party or Non-Party that challenges the
11 designation of information or items under this Order.

12 4.3 “CONFIDENTIAL” Information or Items: information (regardless of
13 how it is generated, stored or maintained) or tangible things that qualify for
14 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
15 the Good Cause Statement.

16 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as
17 their support staff).

18 4.5 Designating Party: a Party or Non-Party that designates information
19 or items that it produces in disclosures or in responses to discovery as
20 “CONFIDENTIAL.”

21 4.6 Disclosure or Discovery Material: all items or information, regardless
22 of the medium or manner in which it is generated, stored, or maintained (including,
23 among other things, testimony, transcripts, and tangible things), that are produced
24 or generated in disclosures or responses to discovery.

25 4.7 Expert: a person with specialized knowledge or experience in a
26 matter pertinent to the litigation who has been retained by a Party or its counsel to
27 serve as an expert witness or as a consultant in this Action.

28 4.8 House Counsel: attorneys who are employees of a party to this

1 Action. House Counsel does not include Outside Counsel of Record or any other
2 outside counsel.

3 4.9 Non-Party: any natural person, partnership, corporation, association
4 or other legal entity not named as a Party to this action.

5 4.10 Outside Counsel of Record: attorneys who are not employees of a
6 party to this Action but are retained to represent a party to this Action and have
7 appeared in this Action on behalf of that party or are affiliated with a law firm that
8 has appeared on behalf of that party, and includes support staff.

9 4.11 Party: any party to this Action, including all of its officers, directors,
10 employees, consultants, retained experts, and Outside Counsel of Record (and their
11 support staffs).

12 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
13 Discovery Material in this Action.

14 4.13 Professional Vendors: persons or entities that provide litigation
15 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
16 demonstrations, and organizing, storing, or retrieving data in any form or medium)
17 and their employees and subcontractors.

18 4.14 Protected Material: any Disclosure or Discovery Material that is
19 designated as "CONFIDENTIAL."

20 4.15 Receiving Party: a Party that receives Disclosure or Discovery
21 Material from a Producing Party.

22 5. SCOPE

23 The protections conferred by this Stipulation and Order cover not only
24 Protected Material (as defined above), but also (1) any information copied or
25 extracted from Protected Material; (2) all copies, excerpts, summaries, or
26 compilations of Protected Material; and (3) any testimony, conversations, or
27 presentations by Parties or their Counsel that might reveal Protected Material.

28 Any use of Protected Material at trial shall be governed by the orders of the

1 trial judge and other applicable authorities. This Order does not govern the use of
2 Protected Material at trial.

3 6. DURATION

4 Once a case proceeds to trial, information that was designated as
5 CONFIDENTIAL or maintained pursuant to this protective order used or
6 introduced as an exhibit at trial becomes public and will be presumptively
7 available to all members of the public, including the press, unless compelling
8 reasons supported by specific factual findings to proceed otherwise are made to the
9 trial judge in advance of the trial. See Kamakana, 447 F.3d at 1180-81
10 (distinguishing “good cause” showing for sealing documents produced in
11 discovery from “compelling reasons” standard when merits-related documents are
12 part of court record). Accordingly, the terms of this protective order do not extend
13 beyond the commencement of the trial.

14 7. DESIGNATING PROTECTED MATERIAL

15 7.1 Exercise of Restraint and Care in Designating Material for
16 Protection.

17 Each Party or Non-Party that designates information or items for protection
18 under this Order must take care to limit any such designation to specific material
19 that qualifies under the appropriate standards. The Designating Party must
20 designate for protection only those parts of material, documents, items or oral or
21 written communications that qualify so that other portions of the material,
22 documents, items or communications for which protection is not warranted are not
23 swept unjustifiably within the ambit of this Order.

24 Mass, indiscriminate or routinized designations are prohibited. Designations
25 that are shown to be clearly unjustified or that have been made for an improper
26 purpose (e.g., to unnecessarily encumber the case development process or to
27 impose unnecessary expenses and burdens on other parties) may expose the
28 Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that
2 it designated for protection do not qualify for protection, that Designating Party
3 must promptly notify all other Parties that it is withdrawing the inapplicable
4 designation.

5 7.2 Manner and Timing of Designations. Except as otherwise provided in
6 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material
7 that qualifies for protection under this Order must be clearly so designated before
8 the material is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic
11 documents, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), that the Producing Party affix at a minimum, the legend
13 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
14 contains protected material. If only a portion of the material on a page qualifies for
15 protection, the Producing Party also must clearly identify the protected portion(s)
16 (e.g., by making appropriate markings in the margins).

17 A Party or Non-Party that makes original documents available for
18 inspection need not designate them for protection until after the inspecting Party
19 has indicated which documents it would like copied and produced. During the
20 inspection and before the designation, all of the material made available for
21 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
22 identified the documents it wants copied and produced, the Producing Party must
23 determine which documents, or portions thereof, qualify for protection under this
24 Order. Then, before producing the specified documents, the Producing Party must
25 affix the "CONFIDENTIAL legend" to each page that contains Protected Material.
26 If only a portion of the material on a page qualifies for protection, the Producing
27 Party also must clearly identify the protected portion(s) (e.g., by making
28 appropriate markings in the margins).

1 (b) for testimony given in depositions that the Designating Party
2 identifies the Disclosure or Discovery Material on the record, before the close of
3 the deposition all protected testimony.

4 (c) for information produced in some form other than documentary
5 and for any other tangible items, that the Producing Party affix in a prominent
6 place on the exterior of the container or containers in which the information is
7 stored the legend "CONFIDENTIAL." If only a portion or portions of the
8 information warrants protection, the Producing Party, to the extent practicable,
9 shall identify the protected portion(s).

10 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive
12 the Designating Party's right to secure protection under this Order for such
13 material. Upon timely correction of a designation, the Receiving Party must make
14 reasonable efforts to assure that the material is treated in accordance with the
15 provisions of this Order.

16 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court's
19 Scheduling Order.

20 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37-1 et seq.

22 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
23 joint stipulation pursuant to Local Rule 37-2.

24 8.4 The burden of persuasion in any such challenge proceeding shall be on
25 the Designating Party. Frivolous challenges, and those made for an improper
26 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
27 parties) may expose the Challenging Party to sanctions. Unless the Designating
28 Party has waived or withdrawn the confidentiality designation, all parties shall

1 continue to afford the material in question the level of protection to which it is
2 entitled under the Producing Party's designation until the Court rules on the
3 challenge.

4 9. ACCESS TO AND USE OF PROTECTED MATERIAL

5 9.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this
7 Action only for prosecuting, defending or attempting to settle this Action. Such
8 Protected Material may be disclosed only to the categories of persons and under
9 the conditions described in this Order. When the Action has been terminated, a
10 Receiving Party must comply with the provisions of section 15 below (FINAL
11 DISPOSITION). Protected Material must be stored and maintained by a Receiving
12 Party at a location and in a secure manner that ensures that access is limited to the
13 persons authorized under this Order.

14 9.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
15 otherwise ordered by the court or permitted in writing by the Designating Party, a
16 Receiving Party may disclose any information or item designated
17 "CONFIDENTIAL" only to:

18 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
19 as employees of said Outside Counsel of Record to whom it is reasonably
20 necessary to disclose the information for this Action;

21 (b) the officers, directors, and employees (including House Counsel) of the
22 Receiving Party to whom disclosure is reasonably necessary for this Action;

23 (c) Experts (as defined in this Order) of the Receiving Party to whom
24 disclosure is reasonably necessary for this Action and who have signed the
25 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26 (d) the court and its personnel;

27 (e) court reporters and their staff;
28

1 (f) professional jury or trial consultants, mock jurors, and Professional
2 Vendors to whom disclosure is reasonably necessary for this Action and who have
3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (g) the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information;

6 (h) during their depositions, witnesses, and attorneys for witnesses, in the
7 Action to whom disclosure is reasonably necessary provided: (1) the deposing
8 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
9 they will not be permitted to keep any confidential information unless they sign the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
11 agreed by the Designating Party or ordered by the court. Pages of transcribed
12 deposition testimony or exhibits to depositions that reveal Protected Material may
13 be separately bound by the court reporter and may not be disclosed to anyone
14 except as permitted under this Stipulated Protective Order; and

15 (i) any mediators or settlement officers and their supporting personnel,
16 mutually agreed upon by any of the parties engaged in settlement discussions.

17 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
18 PRODUCED IN OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other
20 litigation that compels disclosure of any information or items designated in this
21 Action as “CONFIDENTIAL,” that Party must:

22 (a) promptly notify in writing the Designating Party. Such
23 notification shall include a copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or
25 order to issue in the other litigation that some or all of the material covered by the
26 subpoena or order is subject to this Protective Order. Such notification shall
27 include a copy of this Stipulated Protective Order; and

28 (c) cooperate with respect to all reasonable procedures sought to be

1 pursued by the Designating Party whose Protected Material may be affected. If the
2 Designating Party timely seeks a protective order, the Party served with the
3 subpoena or court order shall not produce any information designated in this action
4 as “CONFIDENTIAL” before a determination by the court from which the
5 subpoena or order issued, unless the Party has obtained the Designating Party’s
6 permission. The Designating Party shall bear the burden and expense of seeking
7 protection in that court of its confidential material and nothing in these provisions
8 should be construed as authorizing or encouraging a Receiving Party in this Action
9 to disobey a lawful directive from another court.

10 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO
11 BE PRODUCED IN THIS LITIGATION

12 (a) The terms of this Order are applicable to information produced by a
13 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
14 produced by Non-Parties in connection with this litigation is protected by the
15 remedies and relief provided by this Order. Nothing in these provisions should be
16 construed as prohibiting a Non-Party from seeking additional protections.

17 (b) In the event that a Party is required, by a valid discovery request, to
18 produce a Non-Party’s confidential information in its possession, and the Party is
19 subject to an agreement with the Non-Party not to produce the Non-Party’s
20 confidential information, then the Party shall:

21 (1) promptly notify in writing the Requesting Party and the Non-Party that
22 some or all of the information requested is subject to a confidentiality agreement
23 with a Non-Party;

24 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
25 Order in this Action, the relevant discovery request(s), and a reasonably specific
26 description of the information requested; and

27 (3) make the information requested available for inspection by the Non-
28 Party, if requested.

1 (c) If the Non-Party fails to seek a protective order from this court within 14
2 days of receiving the notice and accompanying information, the Receiving Party
3 may produce the Non-Party's confidential information responsive to the discovery
4 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
5 not produce any information in its possession or control that is subject to the
6 confidentiality agreement with the Non-Party before a determination by the court.
7 Absent a court order to the contrary, the Non-Party shall bear the burden and
8 expense of seeking protection in this court of its Protected Material.

9 12. UNAUTHORIZED DISCLOSURE OF PROTECTED
10 MATERIAL

11 If a Receiving Party learns that, by inadvertence or otherwise, it has
12 disclosed Protected Material to any person or in any circumstance not authorized
13 under this Stipulated Protective Order, the Receiving Party must immediately (a)
14 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
15 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
16 the person or persons to whom unauthorized disclosures were made of all the terms
17 of this Order, and (d) request such person or persons to execute the
18 "Acknowledgment an Agreement to Be Bound" attached hereto as Exhibit A.

19 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
20 OTHERWISE PROTECTED MATERIAL

21 When a Producing Party gives notice to Receiving Parties that certain
22 inadvertently produced material is subject to a claim of privilege or other
23 protection, the obligations of the Receiving Parties are those set forth in Federal
24 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
25 whatever procedure may be established in an e-discovery order that provides for
26 production without prior privilege review. Pursuant to Federal Rule of Evidence
27 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
28 of a communication or information covered by the attorney-client privilege or

work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

14. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

14.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Local Civil Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

15. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 6, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any

1 copies, abstracts, compilations, summaries or any other format reproducing or
2 capturing any of the Protected Material. Notwithstanding this provision, Counsel
3 are entitled to retain an archival copy of all pleadings, motion papers, trial,
4 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
5 and trial exhibits, expert reports, attorney work product, and consultant and expert
6 work product, even if such materials contain Protected Material. Any such archival
7 copies that contain or constitute Protected Material remain subject to this
8 Protective Order as set forth in Section 6 (DURATION).

9 16. VIOLATION

10 Any violation of this Order may be punished by appropriate measures
11 including, without limitation, contempt proceedings and/or monetary sanctions.
12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13 Dated: January 23, 2019

LAW OFFICES OF SCOTT D. HUGHES

15 Bv: /s/ Scott D. Hughes

16 Scott D. Hughes

17 Attorneys for Plaintiff

Alan Palomino

18 Dated: January 23, 2019

ROBERT FABELA, CITY ATTORNEY

20 Bv: /s/ Gregg M. Audet

21 Gregg M. Audet

22 Attorneys for Defendants

City of Anaheim and Jason Smith

23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED

25 DATED: January 23, 2019


26 
27 JOHN D. EARLY
28 United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on January 23, 2019, in the case of *Alan Palomino v. City of Anaheim, et al.*, USDC case no. 8:18-cv-1498 DOC (JDEx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

130996